
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1393

State of Washington

61st Legislature

2009 Regular Session

By House Ways & Means (originally sponsored by Representatives Springer, Kessler, Eddy, Ormsby, Van De Wege, Lias, Morrell, Roberts, Upthegrove, and Sullivan)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to improving residential real property construction
2 by creating a home construction consumer education office,
3 strengthening warranty protections applicable to residential real
4 property construction, enhancing contractor registration requirements,
5 and establishing worker certification standards; amending RCW 18.27.075
6 and 18.27.030; reenacting and amending RCW 43.79A.040; adding new
7 sections to chapter 43.10 RCW; adding new sections to chapter 64.50
8 RCW; adding a new section to chapter 18.27 RCW; creating a new section;
9 and providing an effective date.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 **PART I. OFFICE OF CONSUMER EDUCATION FOR HOME CONSTRUCTION**

12 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10 RCW
13 to read as follows:

14 (1) The office of consumer education for home construction is
15 created in the office of the attorney general to be the primary point
16 of contact for consumers in matters related to residential purchases
17 and construction.

18 (2) The office of consumer education for home construction shall:

1 (a) Educate consumers about residential purchase and sale
2 agreements and contracting for residential construction services,
3 including the requirements of chapter 18.27 RCW and methods available
4 to protect themselves against loss;

5 (b) Produce written and electronic consumer education materials
6 about purchasing homes, contracting for residential construction
7 services, and legal resources available to consumers;

8 (c) Create a pamphlet explaining a homeowner's legal rights and
9 remedies and provide contractors and other construction professionals
10 with a downloadable version of the pamphlet to attach to contracts for
11 purchase and sale of new residential real property or the substantial
12 remodel of existing residential real property. The office shall
13 periodically update this pamphlet;

14 (d) Identify and work collaboratively with agencies and
15 organizations who are already engaged in consumer education efforts
16 regarding residential purchases and construction, such as the
17 department of labor and industries, the department of licensing, local
18 governments, the construction industry, financial institutions, and
19 other interested organizations and individuals, to increase outreach to
20 consumers;

21 (e) Share consumer education materials with and serve as a resource
22 for agencies and organizations who are already engaged in consumer
23 education;

24 (f) Develop a uniform manner of receiving, cataloging, analyzing,
25 and responding to consumer complaints about residential construction,
26 and develop a system of tracking resolutions of complaints and of
27 claims received under section 8 of this act;

28 (g) Identify which agencies and organizations are already receiving
29 complaints and coordinate with them to ensure that all agencies and
30 organizations are requesting the same information from complaining
31 consumers and that all consumers are referred to the office;

32 (h) Enter into data-sharing agreements with the department of labor
33 and industries, local governments, and other agencies with enforcement
34 duties in residential construction to increase assistance to consumers
35 and enforcement of construction-related laws;

36 (i) Report to the legislature on an annual basis the total number
37 of complaints about residential construction received and the total
38 number of claims filed under section 8 of this act. For complaints,

1 the office of consumer education for home construction shall summarize
2 the nature of the complaints. For claims, the office of consumer
3 education for home construction shall summarize the nature of the
4 claims, the monetary value of the claims, whether claims have been
5 resolved, and any other information that the office deems relevant.
6 The first report is due on January 1, 2010, and subsequent reports are
7 due on November 1st of each year thereafter; and

8 (j) Examine issues involved in establishing a recovery fund to
9 provide compensation to residential real property homeowners through a
10 claim filing process. The office of consumer education for home
11 construction shall consult with appropriate agencies and
12 representatives from organizations involved in the area of residential
13 construction. The office of consumer education for home construction
14 shall make recommendations to the legislature on the creation of a
15 recovery fund by December 1, 2010.

16 **Sec. 2.** RCW 18.27.075 and 2001 c 159 s 14 are each amended to read
17 as follows:

18 (1) The department shall charge a fee of one hundred dollars for
19 issuing or renewing a certificate of registration during the 2001-2003
20 biennium. The department shall revise this amount at least once every
21 two years for the purpose of recognizing economic changes as reflected
22 by the fiscal growth factor under chapter 43.135 RCW.

23 (2) The department shall also charge a consumer education fee of
24 one hundred dollars per year for issuing or renewing a certificate of
25 registration to a contractor who discloses, as required under RCW
26 18.27.030, that he or she will perform both residential and commercial
27 work or only residential work. A contractor who discloses that he or
28 she will perform only commercial work is not required to pay the fee.
29 The department shall deposit the fee in the consumer education for home
30 construction account created in section 3 of this act.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW
32 to read as follows:

33 The consumer education for home construction account is created in
34 the custody of the state treasury for the purpose of funding the office
35 of consumer education for home construction. All fees charged under
36 RCW 18.27.075(2) and filing fees charged under section 8 of this act

1 must be deposited into the account. Expenditures from the account may
2 be used only to fund the office of consumer education for home
3 construction. Only the home construction board created under section
4 6 of this act or the board's designee may authorize expenditures from
5 the account. The account is subject to the allotment procedures under
6 chapter 43.88 RCW, but an appropriation is not required for
7 expenditures.

8 **Sec. 4.** RCW 43.79A.040 and 2008 c 239 s 9, 2008 c 208 s 9, 2008 c
9 128 s 20, and 2008 c 122 s 24 are each reenacted and amended to read as
10 follows:

11 (1) Money in the treasurer's trust fund may be deposited, invested,
12 and reinvested by the state treasurer in accordance with RCW 43.84.080
13 in the same manner and to the same extent as if the money were in the
14 state treasury.

15 (2) All income received from investment of the treasurer's trust
16 fund shall be set aside in an account in the treasury trust fund to be
17 known as the investment income account.

18 (3) The investment income account may be utilized for the payment
19 of purchased banking services on behalf of treasurer's trust funds
20 including, but not limited to, depository, safekeeping, and
21 disbursement functions for the state treasurer or affected state
22 agencies. The investment income account is subject in all respects to
23 chapter 43.88 RCW, but no appropriation is required for payments to
24 financial institutions. Payments shall occur prior to distribution of
25 earnings set forth in subsection (4) of this section.

26 (4)(a) Monthly, the state treasurer shall distribute the earnings
27 credited to the investment income account to the state general fund
28 except under (b) and (c) of this subsection.

29 (b) The following accounts and funds shall receive their
30 proportionate share of earnings based upon each account's or fund's
31 average daily balance for the period: The Washington promise
32 scholarship account, the college savings program account, the
33 Washington advanced college tuition payment program account, the
34 agricultural local fund, the American Indian scholarship endowment
35 fund, the foster care scholarship endowment fund, the foster care
36 endowed scholarship trust fund, the students with dependents grant
37 account, the basic health plan self-insurance reserve account, the

1 contract harvesting revolving account, the Washington state combined
2 fund drive account, the commemorative works account, the Washington
3 international exchange scholarship endowment fund, the toll collection
4 account, the developmental disabilities endowment trust fund, the
5 energy account, the fair fund, the family leave insurance account, the
6 food animal veterinarian conditional scholarship account, the fruit and
7 vegetable inspection account, the future teachers conditional
8 scholarship account, the game farm alternative account, the GET ready
9 for math and science scholarship account, the grain inspection
10 revolving fund, the juvenile accountability incentive account, the law
11 enforcement officers' and firefighters' plan 2 expense fund, the local
12 tourism promotion account, the pilotage account, the produce railcar
13 pool account, the regional transportation investment district account,
14 the rural rehabilitation account, the stadium and exhibition center
15 account, the youth athletic facility account, the self-insurance
16 revolving fund, the sulfur dioxide abatement account, the children's
17 trust fund, the Washington horse racing commission Washington bred
18 owners' bonus fund account, the Washington horse racing commission
19 class C purse fund account, the individual development account program
20 account, the Washington horse racing commission operating account
21 (earnings from the Washington horse racing commission operating account
22 must be credited to the Washington horse racing commission class C
23 purse fund account), the life sciences discovery fund, the Washington
24 state heritage center account, the reduced cigarette ignition
25 propensity account, the consumer education for home construction
26 account, and the reading achievement account. However, the earnings to
27 be distributed shall first be reduced by the allocation to the state
28 treasurer's service fund pursuant to RCW 43.08.190.

29 (c) The following accounts and funds shall receive eighty percent
30 of their proportionate share of earnings based upon each account's or
31 fund's average daily balance for the period: The advanced right-of-way
32 revolving fund, the advanced environmental mitigation revolving
33 account, the city and county advance right-of-way revolving fund, the
34 federal narcotics asset forfeitures account, the high occupancy vehicle
35 account, the local rail service assistance account, and the
36 miscellaneous transportation programs account.

37 (5) In conformance with Article II, section 37 of the state

1 Constitution, no trust accounts or funds shall be allocated earnings
2 without the specific affirmative directive of this section.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.10 RCW
4 to read as follows:

5 For the purposes of sections 6 through 10 of this act the following
6 definitions apply:

7 (1) "Board" means the home construction board created in section 6
8 of this act.

9 (2) "Claim" means a claim filed with the board against a
10 construction professional under section 8 of this act and does not mean
11 a complaint as that term is used in section 1 of this act.

12 (3) "Construction professional" means a builder, builder vendor,
13 contractor, subcontractor, or inspector, performing or furnishing the
14 design, supervision, inspection, construction, or observation of the
15 construction, of any improvement to residential real property, whether
16 operating as a sole proprietor, partnership, corporation, or other
17 business entity. "Construction professional" does not include a
18 supplier of materials who has otherwise had no involvement in
19 performing or furnishing the design, supervision, inspection,
20 construction, or observation of the construction, of any improvement to
21 residential real property. "Construction professional" does not
22 include an inspector who is an agent or employee of a local government
23 and acting in his or her official capacity as an inspector.

24 (4) "Contractor" means a contractor, as defined in RCW 18.27.010,
25 that is registered with the department of labor and industries under
26 chapter 18.27 RCW.

27 (5) "Damages" means the cost of repairs, or if the cost of repairs
28 is clearly disproportionate to the loss in market value, damages is the
29 loss in market value.

30 (6) "Defect" means a deficiency, an inadequacy, or an insufficiency
31 arising out of or relating to the construction, alteration, or repair
32 of residential real property. "Defect" also includes a deficiency, an
33 inadequacy, or an insufficiency in a system, component, or material
34 incorporated into residential real property.

35 (7) "Homeowner" means a person or persons owning residential real
36 property. "Homeowner" does not include government agencies, political
37 subdivisions, financial institutions, and any other entity that

1 purchases, guarantees, or insures a loan secured by real property.
2 "Homeowner" also does not include the spouse, domestic partner, or
3 personal representative of the contractor named in the claim filed
4 under section 8 of this act.

5 (8) "Residential real property" has the same meaning as in section
6 14 of this act.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.10 RCW
8 to read as follows:

9 (1) The home construction board is established within the office of
10 consumer education for home construction to administer a residential
11 real property homeowner and construction professional early resolution
12 mediation program.

13 (2) The purpose of the board is to provide homeowners and
14 construction professionals with a cost-effective and time efficient
15 process to resolve disputes arising from alleged construction.

16 (3) The board consists of the following seven members:

17 (a) Three members possessing a minimum of ten years of experience
18 in the construction of residences and directly, or as employees or
19 officers of a firm, registered under chapter 18.27 RCW;

20 (b) One member possessing a minimum of ten years of experience in
21 the remodeling of residences and directly, or as employees or officers
22 of a firm, registered under chapter 18.27 RCW;

23 (c) One building inspector employed by a city or county; and

24 (d) Two members of the general public.

25 (4) Members of the board shall be appointed by the governor with
26 consent of the senate. The governor shall appoint initial members of
27 the board to staggered terms of from two to four years. Thereafter,
28 all members shall be appointed to full four-year terms. Members of the
29 board hold office until their successors are appointed. A vacancy
30 shall be filled by appointment by the governor for the unexpired
31 portion of the term in which the vacancy occurs.

32 (5) The board shall select from its members a chair person, vice-
33 chair person, and any other officer the board determines is necessary
34 to perform its duties.

35 (6) The board shall meet a minimum of four times per year to carry
36 out its functions.

37 (7) The board may adopt rules to implement the board's duties.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.10 RCW
2 to read as follows:

3 (1) The board shall investigate and mediate claims filed by a
4 homeowner against a construction professional for alleged construction
5 defects to residential real property.

6 (2) The board may use the services of neutral third-party experts
7 to assist the board in investigating, assessing, and mediating claims.
8 The board may rely on the national building standards and other
9 recognized standards or codes that the board finds appropriate in
10 investigating and assessing the claim.

11 (3) The board shall dismiss a claim if the board determines that
12 the claim is against a contractor who is not registered under chapter
13 18.27 RCW.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.10 RCW
15 to read as follows:

16 (1) A homeowner of residential real property alleging that a
17 construction professional has performed defective work must, prior to
18 commencing an action against the construction professional, file a
19 claim against the construction professional with the board.

20 (2) The claim shall be in the form required by the board, and shall
21 include, at a minimum:

22 (a) The name and mailing address of the homeowner or the
23 homeowner's legal representative, if any;

24 (b) The address and location of the residential real property;

25 (c) The names and addresses of the construction professionals, to
26 the extent known to the homeowner, who performed the work;

27 (d) Whether the work performed involved construction of new
28 residential real property or a substantial remodel of residential real
29 property and the date that the homeowner took possession of the new
30 residential real property or, for a substantial remodel, the date the
31 work was substantially completed or the project was terminated;

32 (e) A description of the defective work performed and the actual or
33 estimated costs of repair;

34 (f) Any report, estimates, and other documents evidencing the
35 defect and the costs of repair;

36 (g) Whether there is a written contract between the construction

1 professional and the homeowner and whether the contract contains
2 warranties related to the work performed or the materials used.

3 (3) The board may not process a claim against a construction
4 professional unless the claim is filed with the board within the
5 applicable statute of limitations.

6 (4) When a claim is filed with the board within the applicable
7 statute of limitations, the filing of the claim tolls any applicable
8 statute of limitations and any applicable statute of repose for
9 construction-related claims for the period of time until fifteen days
10 after the board provides written notice of completion of mediation.

11 (5) Any action commenced in court by a homeowner prior to
12 compliance with the requirements of this section shall be subject to
13 dismissal without prejudice, and may not be recommenced until the
14 homeowner has complied with the requirements of this section.

15 (6) The board by rule may impose a processing fee for claims filed
16 under this section not to exceed one hundred dollars. The fee shall be
17 deposited into the consumer education for home construction account
18 created under section 3 of this act.

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.10 RCW
20 to read as follows:

21 (1) Upon receipt of a claim, the board shall give written notice to
22 the construction professional against whom the claim is made. The
23 notice of the claim shall describe the claim in reasonable detail
24 sufficient to determine the nature of the defect.

25 (2) Within twenty-one days after service of the notice of claim,
26 the construction professional shall serve a written response on the
27 homeowner by registered mail or personal service. The written response
28 shall:

29 (a) Propose to inspect the residence that is the subject of the
30 claim and to complete the inspection within a specified time frame.
31 The proposal shall include the statement that the construction
32 professional shall, based on the inspection, offer to remedy the
33 defect, compromise by payment, or dispute the claim;

34 (b) Offer to compromise and settle the claim by monetary payment
35 without inspection. A construction professional's offer under this
36 subsection (2)(b) to compromise and settle a homeowner's claim may

1 include, but is not limited to, an express offer to purchase the
2 homeowner's residence that is the subject of the claim, and to pay the
3 homeowner's reasonable relocation costs; or

4 (c) State that the construction professional disputes the claim and
5 will neither remedy the defect nor compromise and settle the claim.

6 (3)(a) If the construction professional disputes the claim or does
7 not respond to the notice of claim within the time stated in subsection
8 (2) of this section, the board shall commence an investigation and
9 mediation of the claim.

10 (b) If the homeowner rejects the inspection proposal or the
11 settlement offer made by the construction professional pursuant to
12 subsection (2) of this section, the homeowner shall serve written
13 notice of the rejection on the construction professional and the board.
14 After service of the rejection, the board shall commence an
15 investigation and mediation of the claim.

16 (c) If the construction professional has not received from the
17 homeowner, within thirty days after the homeowner's receipt of the
18 construction professional's response, either an acceptance or rejection
19 of the inspection proposal or settlement offer, then at anytime
20 thereafter the construction professional may terminate the proposal or
21 offer by serving written notice to the homeowner, and the board shall
22 commence an investigation and mediation of the claim.

23 (4)(a) If the homeowner elects to allow the construction
24 professional to inspect in accordance with the construction
25 professional's proposal pursuant to this section, the homeowner shall
26 provide the construction professional and its contractors or other
27 agents reasonable access to the homeowner's residence during normal
28 working hours to inspect the premises and the claimed defect.

29 (b) Within fourteen days following completion of the inspection,
30 the construction professional shall serve on the homeowner:

31 (i) A written offer to remedy the defect at no cost to the
32 homeowner, including a report of the scope of the inspection, the
33 findings and results of the inspection, a description of the additional
34 construction necessary to remedy the defect, and a timetable for the
35 completion of such construction;

36 (ii) A written offer to compromise and settle the claim by monetary
37 payment pursuant to subsection (2)(b) of this section; or

1 (iii) A written statement that the construction professional will
2 not proceed further to remedy the defect.

3 (c) If the construction professional does not proceed further to
4 remedy the defect within the agreed timetable, or if the construction
5 professional fails to comply with the provisions of (b) of this
6 subsection, the homeowner shall provide written notification to the
7 board. The board shall commence an investigation and mediation of the
8 claim.

9 (d) If the homeowner rejects the offer made by the construction
10 professional pursuant to (b)(i) or (ii) of this subsection to either
11 remedy the defect or to compromise and settle the claim by monetary
12 payment, the homeowner shall serve written notice of the rejection on
13 the construction professional and the board. After service of the
14 rejection notice, the board shall commence an investigation and
15 mediation of the claim.

16 (e) If the construction professional has not received from the
17 homeowner, within thirty days after the homeowner's receipt of the
18 construction professional's response, either an acceptance or rejection
19 of the offer made pursuant to (b)(i) or (ii) of this subsection, then
20 at anytime thereafter the construction professional may terminate the
21 offer by serving written notice to the homeowner.

22 (5)(a) Any homeowner accepting the offer of a construction
23 professional to remedy the defect pursuant to subsection (4)(b)(i) of
24 this section shall do so by serving the construction professional with
25 a written notice of acceptance within a reasonable time period after
26 receipt of the offer, and no later than thirty days after receipt of
27 the offer. The homeowner shall also send a copy of the written notice
28 of acceptance to the board. The homeowner shall provide the
29 construction professional and its contractors or other agents
30 reasonable access to the homeowner's residence during normal working
31 hours to perform and complete the construction by the timetable stated
32 in the offer.

33 (b) The homeowner and construction professional may, by written
34 mutual agreement, alter the extent of construction or the timetable for
35 completion of construction stated in the offer including, but not
36 limited to, repair of additional defects.

37 (6) Compliance with this section satisfies the requirements of RCW
38 64.50.020.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.10 RCW
2 to read as follows:

3 (1) If, after compliance with the procedures established in section
4 9 of this act, a resolution has not been reached between the homeowner
5 and construction professional, the board shall investigate the claim.

6 (2) The board may use the services of neutral third-party experts
7 to conduct on-site investigations, make recommendations to the board,
8 and assist the board in investigating and mediating claims.

9 (3) After the investigation is complete, the board shall provide
10 the parties with notification of the findings of the investigation. If
11 the parties do not provide the board with written notification within
12 fourteen days after receipt of the findings that the parties have
13 resolved the claim, the board shall mediate the claim.

14 (4) The mediation shall be conducted by a panel of three members of
15 the board in accordance with rules adopted by the board.

16 (5) All proceedings of the mediation conference, including any
17 statement made by any party, attorney, or other participant, shall be
18 privileged and not reported, recorded, placed in evidence, used for
19 impeachment, made known to a court or jury, or construed for any
20 purpose as an admission. No party shall be bound by anything done or
21 said at the mediation conference unless a settlement is reached, in
22 which event the agreement upon a settlement shall be reduced to writing
23 and shall be binding upon all parties to that agreement.

24 (6) At the conclusion of the mediation, the board shall provide a
25 written notice of the completion of mediation to the parties. The
26 notice shall include a statement of the results of the mediation and a
27 copy of any written settlement agreement between the parties. If the
28 parties did not reach an agreement, the notice shall include a
29 statement that the parties may pursue any other right or remedy
30 provided under statutory or common law. However, a homeowner who files
31 an action under the common law implied warranty of habitability waives
32 any available claim under express contract warranties. A homeowner who
33 files a claim under express contract warranties waives any claim under
34 the common law implied warranty of habitability.

35 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.10 RCW
36 to read as follows:

37 (1) The board shall maintain and make available to the office of

1 consumer education for home construction a record of all claims filed
2 with the board against construction professionals under this chapter
3 and the outcomes of those claims.

4 (2) The office of consumer education for home construction shall
5 compile a summary of the claims into a report for the legislature as
6 required under section 1 of this act.

7 NEW SECTION. **Sec. 12.** A new section is added to chapter 64.50 RCW
8 to read as follows:

9 The provisions of RCW 64.50.020 do not apply to a claim filed with
10 the home construction board under sections 8 through 10 of this act.

11 **PART II. RESIDENTIAL REAL PROPERTY WARRANTIES**

12 NEW SECTION. **Sec. 13.** A new section is added to chapter 64.50 RCW
13 to read as follows:

14 (1) The common law implied warranty of habitability may not be
15 disclaimed, waived, modified, or limited by contractual agreement. A
16 provision of any contract for the purchase or sale of newly constructed
17 residential property that purports to disclaim, waive, modify, or limit
18 the implied warranty of habitability is void and unenforceable.

19 (2) The common law implied warranty of habitability for newly
20 constructed residential real property extends to any homeowner who
21 purchases the property within six years of its construction, and is not
22 limited to the initial owner-occupant of the property. A homeowner who
23 purchases the property subsequent to the initial owner-occupant, and
24 within six years of the construction of the property, receives the same
25 protections of the common law implied warranty of habitability as
26 possessed by the person from whom the property was purchased.

27 (3) Damages awarded for a breach of the implied warranty of
28 habitability are the cost of repairs. However, if it is established
29 that the cost of repairs is clearly disproportionate to the loss in
30 market value caused by the breach, damages are limited to the loss in
31 market value.

32 NEW SECTION. **Sec. 14.** A new section is added to chapter 64.50 RCW
33 to read as follows:

1 (1) Every contract for the sale or construction of new residential
2 real property shall provide for written express warranties to the
3 purchaser or owner of the residential real property.

4 (2) The express warranties shall meet the following requirements:

5 (a) The express warranties must assure timely resolution of
6 homeowners' complaints or claims covered under (j) of this subsection.

7 (b) The entire cost to the homeowner for the express warranties
8 coverage must be prepaid by the entity providing the express
9 warranties, or the express warranties issuer must give irrevocable
10 coverage, at the time of settlement.

11 (c) Unexpired express warranties coverage must be automatically
12 transferred, without additional cost, to subsequent homeowners.

13 (d) Issued express warranties coverage must be noncancellable by
14 the express warranties issuer or by its insurance backers.

15 (e) Exclusions from express warranties coverage must not defeat
16 coverage objectives stated in (j) of this subsection and must permit
17 normal homeowner use of the covered property, including normal
18 maintenance and emergency property protection measures.

19 (f)(i) Unless prohibited by applicable law, express warranties
20 must, at a minimum, stipulate that all homeowner complaints covered by
21 express warranties, including those regarding construction deficiencies
22 and structural defects claims, will be settled in the amount of their
23 actual cost to correct or for the original sales price of the property,
24 whichever is the lesser, subject to a deductible not to exceed a total
25 of two hundred fifty dollars for all claims filed by a homeowner during
26 the first two years of coverage and not to exceed a maximum of two
27 hundred fifty dollars per claim during the third through the tenth year
28 of coverage.

29 (ii) A homeowner shall be liable for a deductible only if the
30 entity providing the express warranties defaults on warranty
31 performance and the express warranties issuer has to make the covered
32 corrections. When the entity providing the express warranties performs
33 corrections under the warranties, no deductible that may be included in
34 the express warranties is applicable.

35 (g) In the event of any dispute regarding a homeowner complaint or
36 structural defect claim, express warranties must, unless prohibited by
37 applicable law, provide for binding arbitration proceedings arranged
38 through a nationally recognized dispute settlement organization. The

1 sharing of arbitration charges shall be as determined by the express
2 warranties. Express warranties must contain prearbitration
3 conciliation provisions at no cost to the homeowner, and provision for
4 judicial resolution of disputes, but arbitration, which must be
5 available to a homeowner during the entire term of the coverage
6 contract, must be an assured recourse for a dissatisfied homeowner.

7 (h) An express warranties issuer must provide homeowners an
8 executed coverage contract clearly describing:

9 (i) The identity of the property covered;

10 (ii) The time at which coverage begins;

11 (iii) The maximum amount of express warranties liability;

12 (iv) Noncancellability of the coverage contract by the express
13 warranties or its insurance backers;

14 (v) No-cost transferability of unexpired coverage to successors in
15 title;

16 (vi) The property coverage provided;

17 (vii) Any exclusions from coverage;

18 (viii) Performance standards for resolving homeowner complaints and
19 claims, if standards for complaint and claim adjustment are promulgated
20 as part of the express warranties;

21 (ix) Dispute settlement procedures;

22 (x) The names, addresses, and telephone numbers of the express
23 warranties issuer and its insurance backers; and

24 (xi) When, to whom, under what conditions, and to what address
25 homeowners should submit any construction deficiency complaints or
26 structural defects claims.

27 (i) Express warranties will not be required to warrant that a
28 covered property complies with:

29 (i) Original dwelling plans and specifications;

30 (ii) Applicable building codes; or

31 (iii) Specific terms of a homeowner's contract to purchase a
32 property.

33 (j) Express warranties coverage must take effect at closing or
34 settlement following the initial sale of the property to the homeowner
35 and must include the following minimum level of coverage:

36 (i) During the first year of coverage, the express warranties must
37 provide for a warranty against defects in workmanship and materials
38 resulting from the failure of the covered property to comply with

1 standards of quality as measured by acceptable trade practices, as well
2 as correct the problems with, or restore the reliable function of,
3 appliances and equipment damaged during installation or improperly
4 installed. The express warranties must also cover structural defects
5 as defined in subsection (4) of this section.

6 (ii) During the first and second year of coverage, the express
7 warranties must provide a warranty against defects in the wiring,
8 piping, and ductwork in the electrical, plumbing, heating, cooling,
9 ventilating, and mechanical systems.

10 (iii) Basement slabs in designated areas must be covered by a
11 warranty against damage from the first through the fourth year.

12 (iv) From the first through the tenth year, structural defect, as
13 defined in subsection (4) of this section, except as provided in
14 (j)(iii) of this subsection, must be covered by a warranty in the
15 express warranties.

16 (k) The express warranties must provide insurance coverage for
17 default on any warranty obligation.

18 (3) This section does not apply to condominiums subject to chapter
19 64.34 RCW.

20 (4) For the purposes of this section:

21 (a) "Construction deficiencies" are defects, not of a structural
22 nature, in residential real property covered by express warranties that
23 are attributable to poor workmanship or to the use of inferior
24 materials which result in the impaired functioning of the residential
25 real property or some part thereof. Defects resulting from homeowner
26 abuse or from normal wear and tear are not considered construction
27 deficiencies.

28 (b) "Residential real property" means a single-family home, a
29 duplex, a triplex, or a quadraplex.

30 (c) "Structural defect" is actual physical damage to the designated
31 load-bearing portions of residential real property caused by failure of
32 such load-bearing portions that affects their load-bearing functions to
33 the extent that the structure becomes unsafe, unsanitary, or otherwise
34 unlivable. "Load-bearing components" for the purpose of defining
35 structural defects are defined as follows: Footing and foundation
36 systems; beams; girders; lintels; columns; load-bearing walls and
37 partitions; roof framing systems; and floor systems. "Structural
38 defect" does not include damage to the following nonload-bearing

1 portions of the structure: Roofing; drywall and plaster; exterior
2 siding; brick, stone, or stucco veneer; floor covering material; wall
3 tile and other wall coverings; nonload-bearing walls and partitions;
4 concrete floors in attached garages; electrical; plumbing, heating,
5 cooling, and ventilation systems; appliances, fixtures, and items of
6 equipment; paint; doors and windows; trim, cabinets, hardware, and
7 insulation.

8 **PART III. CONTRACTOR REGISTRATION**

9 **Sec. 15.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to read
10 as follows:

11 (1) An applicant for registration as a contractor shall submit an
12 application under oath upon a form to be prescribed by the director and
13 which shall include the following information pertaining to the
14 applicant:

15 (a) Employer social security number.

16 (b) Unified business identifier number.

17 (c) Evidence of workers' compensation coverage for the applicant's
18 employees working in Washington, as follows:

19 (i) The applicant's industrial insurance account number issued by
20 the department;

21 (ii) The applicant's self-insurer number issued by the department;
22 or

23 (iii) For applicants domiciled in a state or province of Canada
24 subject to an agreement entered into under RCW 51.12.120(7), as
25 permitted by the agreement, filing a certificate of coverage issued by
26 the agency that administers the workers' compensation law in the
27 applicant's state or province of domicile certifying that the applicant
28 has secured the payment of compensation under the other state's or
29 province's workers' compensation law.

30 (d) Employment security department number.

31 (e) Unified business identifier (UBI) account number may be
32 substituted for the information required by (c) and (d) of this
33 subsection if the applicant will not employ employees in Washington.

34 (f) Type of contracting activity, whether a general or a specialty
35 contractor and if the latter, the type of specialty.

1 (g) Type of work performed, whether residential, commercial, or
2 both.

3 (h) The name ((and)), address, social security number, date of
4 birth, and driver's license number of each partner if the applicant is
5 a firm or partnership, or the name ((and)), address, social security
6 number, date of birth, and driver's license number of the owner if the
7 applicant is an individual proprietorship, or the name ((and)),
8 address, social security number, date of birth, and driver's license
9 number of the corporate officers and statutory agent, if any, if the
10 applicant is a corporation, or the name ((and)), address, social
11 security number, date of birth, and driver's license number of all
12 members of other business entities. The information contained in such
13 application is a matter of public record and open to public inspection.

14 (i) The registration numbers and unified business identifier
15 account numbers of previously or currently registered businesses
16 involving the same owner, principal, or officer as the applicant.

17 (j) Disclosure of any bankruptcy proceedings filed by or against
18 the applicant.

19 (k) Information about any construction licenses, certifications, or
20 registrations that have been issued to the applicant by other states.
21 The applicant shall also provide details about any denials,
22 suspensions, revocations, or any enforcement actions related to
23 construction against the applicant by other states.

24 (2) The department may verify the workers' compensation coverage
25 information provided by the applicant under subsection (1)(c) of this
26 section, including but not limited to information regarding the
27 coverage of an individual employee of the applicant. If coverage is
28 provided under the laws of another state, the department may notify the
29 other state that the applicant is employing employees in Washington.

30 (3)(a) The department shall deny an application for registration
31 if: (i) The applicant has been previously performing work subject to
32 this chapter as a sole proprietor, partnership, corporation, or other
33 entity and the department has notice that the applicant has an
34 unsatisfied final judgment against him or her in an action based on
35 work performed subject to this chapter or the applicant owes the
36 department money for penalties assessed or fees due under this chapter
37 as a result of a final judgment; (ii) the applicant was an owner,
38 principal, or officer of a partnership, corporation, or other entity

1 that either has an unsatisfied final judgment against it in an action
2 that was incurred for work performed subject to this chapter or owes
3 the department money for penalties assessed or fees due under this
4 chapter as a result of a final judgment; (iii) the applicant does not
5 have a valid unified business identifier number; (iv) the department
6 determines that the applicant has falsified information on the
7 application, unless the error was inadvertent; ~~((e))~~ (v) the applicant
8 does not have an active and valid certificate of registration with the
9 department of revenue; or (vi) the department has determined that a
10 different state has taken enforcement action against the applicant for
11 activities that would be a violation of this chapter if they had
12 occurred in Washington state.

13 (b) The department shall suspend an active registration if: (i)
14 The department has determined that the registrant has an unsatisfied
15 final judgment against it for work within the scope of this chapter;
16 (ii) the department has determined that the registrant is a sole
17 proprietor or an owner, principal, or officer of a registered
18 contractor that has an unsatisfied final judgment against it for work
19 within the scope of this chapter; (iii) the registrant does not
20 maintain a valid unified business identifier number; (iv) the
21 department has determined that the registrant falsified information on
22 the application, unless the error was inadvertent; ~~((e))~~ (v) the
23 registrant does not have an active and valid certificate of
24 registration with the department of revenue; or (vi) the department has
25 determined that a different state has taken enforcement action against
26 the registrant for activities that would be a violation of this chapter
27 if they had occurred in Washington state.

28 (c) The department may suspend an active registration if the
29 department has determined that an owner, principal, partner, or officer
30 of the registrant was an owner, principal, or officer of a previous
31 partnership, corporation, or other entity that has an unsatisfied final
32 judgment against it.

33 (4) The department shall not deny an application or suspend a
34 registration because of an unsatisfied final judgment if the
35 applicant's or registrant's unsatisfied final judgment was determined
36 by the director to be the result of the fraud or negligence of another
37 party.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 18.27 RCW
2 to read as follows:

3 A registered contractor, by or against whom a petition in
4 bankruptcy has been filed, shall notify the department of the
5 proceedings in bankruptcy, including the identity and location of the
6 court in which the proceedings are pending, within ten days of the
7 filing.

8 NEW SECTION. **Sec. 17.** Sections 5 through 14 of this act take
9 effect April 1, 2010.

10 NEW SECTION. **Sec. 18.** Part headings used in this act are not any
11 part of the law.

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